IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-10-11-2005

Present:-

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Writ Petition Nos. 557, 558 and 610 of 2004

Bharat Guthikonda. .. Petitioner in W.P.No.557/2004.

Jacob Pavothi Kunnel
Philip .. Petitioner in W.P.No.558/2004.

P. Ashok. .. Petitioner in W.P.No.610/2004.

Vs.

1. The Pondicherry University,
   represented by its Registrar,
   Kalapet, Pondicherry.

2. The Controller of Examinations,
   Pondicherry University,
   Kalapet, Pondicherry.

3. The Medical Council of India,
   represented by its Chairman,
   Opp. To Matusundari College for Women,
   New Delhi-110 002.

4. The Vinayaka Missions Medical College,
   represented by its Dean,
   Keezakasakdi Post, Karaikal, Pondicherry.

.. Respondents in all the W.Ps.

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Writ Petitions have been filed under Article 226 of the Constitution of India,

i) for issuance of a writ of declaration declaring that the petitioner has passed in the subject of Obstetrics and Gynaecology of Final year MBBS Examination held in November, 2003 with Registration No. 8617510 as per MCI Regulations 1997 and also in the subject of

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Paediatrics by awarding one grace mark, making eligible to undergo Internship and become a Registered Medical Practitioner; (WP.557/04)

ii) for issuance of a writ of declaration declaring that the petitioner has passed in the subjects Surgery of Final year MBBS Course Examination held in November 2003 with Registration No. 96177525 as per the MCI Regulations 1997 and also in the subject of Obstertics and Gynaecology by awarding two Grace Marks making eligible to undergo Internship and become Registered Medical Practitioner; (WP.558/04) and

iii) for issuance of a writ of declaration declaring that the petitioner has passed in the subject of Paediatrics, in final year MBBS Examination held in November, 2003 with Registration No. 8617508 as per the MCI Regulations making him eligible to undergo internship and become Registered Medical Practitioner.(WP.610/04)

Mr. N. Paul Vasanthakumar:- For petitioner in W.P. Nos. 557 and 558/2004.

Mr. L. Chandrakumar:- For petitioner in W.P.No. 610/2004.

Mr. K. Srinivasan:- For Respondents 1 and 2 in all W.Ps.

Mr. R. Singaravelan:- For 3rd Respondent in all W.Ps.

COMMON ORDER

(Order of the Court was made by *P. Sathasivam, J.*,)

Since the issue raised in these petitions is one and the same, they are being disposed of by the following common order:

In W.P.No. 557/2004 the petitioner Bharat Guthikonda seeks to issue a Writ of Declaration declaring that he has passed in the subject of Obstetrics and Gynaecology of Final year MBBS Examination held in November, 2003 with Registration No. 8617510 as per Medical Council of India Regulations ("MCI" in short),1997 and also in the subject of Paediatrics by awarding one grace mark, making eligible to undergo Internship and become a Registered Medical Practitioner. In the other two writ petitions, the respective petitioners, namely,

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Jacob Pavothi Kunnel Philip and P. Ashok have prayed for similar relief.

2. For convenience we shall refer the case of the petitioner in W.P.No. 557/2004. According to the petitioner, he has joined in the fourth respondent Medical College for the 1st Year MBBS Degree course during the academic year 1997-98 under the new regulations. He completed the MBBS course and passed all the examinations except OG and Paediatrics in which he is declared fail in the examination conducted in November, 2003. His Registration Number is 8617510. The petitioner has passed in all other subjects and in November, 2003 examination he passed in other two subjects viz., Surgery and Medicine. He is declared fail in the said two papers by applying Pondicherry University Regulations which prescribe separate minimum in Theory and Practical which is contrary to Chapter IV 12 (4) of the Medical Council of India Regulations 1997 which deals with the Professional examinations, distribution of marks to various disciplines. Under the MCI norms in the subject of Obstetrics and Gynaecology, the petitioner is required to get 70/140 and he secured 75/140 and in the subject of Paediatrics he is required to get 30/60. However, he got only 29 out of 60 which means he is lacking one mark for reaching aggregate of 50%. The MCI Regulation clearly states that if a candidate has passed in the other subjects in an examination but failed in only in one subject upto 5 marks can be awarded as Grace Marks. In November, 2003 examination, the Pondicherry University awarded upto 5 marks including in the subject of Paediatrics and if the petitioner is awarded one grace mark as per the MCI Regulations which is followed by the Pondicherry University even for the November, 2003 examination, he can be declared pass in the subject of Paediatrics also and thereby he is completing the MBBS Degree. Even though the petitioner has satisfied MCI Regulations prescribed norms for declaring pass in the subject, is declared fail in the said two subjects of Paediatrics and O and G. The said action of respondents 1 and 2 i.e., Pondicherry University is contrary to the MCI Regulations.

3. On behalf of Pondicherry University, its Registrar has filed a separate but identical counter affidavit. Here again, we shall consider the stand of the University as stated in W.P.No. 557/2004. The petitioner was declared failed in two subjects, namely, obstetrics and Gynaecology and Paediatrics and declared pass in the other two subjects, namely, General Medicine and General Surgery. The Pondicherry University Regulations and Syllabus for Bachelor of Medicine and Bachelor of Surgery which came into effect from July, 1997 onwards prescribes the standard of pass namely, Part II subjects, a candidate should secure at least 40% marks in University Theory Examinations and 50% marks in University Clinical examinations. But he must secure 50% marks in theory (Theory + Theory internal Assessment + Oral and Practical (Practical/Clinical +

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Practical Internal Assessment) separately. As per M.C.I., in each of the subjects a candidate must obtain 50 per cent in aggregate with a minimum of 50% in theory including orals and minimum of 50% in practicals/clinicals. By applying the standard fixed by the Pondicherry University, the petitioner in W.P.No. 557/2004 was declared fail by the University in the examinations conducted during November, 2003 in the two subjects namely Obstetrics and Gynaecology and Paediatrics. But as per the Standard fixed by the MCI the petitioner in W.P.No. 557 of 2004 has passed in Obstetrics Gynaecology but failed in Paediatrics and he claims grace marks to be awarded in Paediatrics. There is no prohibition under the Indian Medical Council Act, 1956 to prescribe higher standards. Though the University largely and substantially follow the MCI Regulations, it has however put higher condition than MCI with respect of pass determination in order to maintain standards. Similar averments have been made in the other two writ petitions also.

4. Medical Council of India has also filed identical but separate counter affidavit in all the 3 writ petitions. The stand of the Medical Council of India is that the Regulations framed by it are statutory in character and as has been held by the Supreme Court of India, the same are binding and mandatory. The 1997 Regulations stipulate the following:

a) A student must secure at least 50% (now reduced to 35%) of the total marks fixed for internal assessment in order to be eligible to appear in the University Examination in that subject.

b) If the student is able to obtain the minimum marks as above-said in the internal assessment, he shall be eligible to appear in the University Examination.

c) Upon appearance in the University Examination the student must obtain

(i) 50% in Theory including orals
(ii) as well as 50% in Clinical/Practical.

d) The aggregate of the student in that subject must add up to more than 50%.

e) The total score of the student in a particular subject is to be calculated on the following basis:

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i) The marks scored by the student in the Final University Examination must be given 80% weightage.

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ii) The marks scored by the student in the internal assessment must be given 20% weightage.

f) The total marks of the student, after calculating it on the abovementioned basis must be more than 50%.

Further, to clear any subject successfully in accordance with the Regulation on Graduate Medical Education, 1997, a candidate must get minimum of 50% marks in the Theory including Oral and Practicals examination conducted by the University. Further, the candidate must also get minimum of 50% marks in aggregate in the respective subject. If any student fails in only one subject then grace marks up to maximum of 5 marks can be awarded to such a student at the discretion of the University. In view of the marks secured, the prayer as claimed cannot be granted. Similar stand has been taken in other two writ petitions.

5. In the light of the above pleadings, we heard Mr. N. Paul Vasanthakumar, learned counsel for the petitioner in W.P.Nos. 557 and 558/2004; Mr. L. Chandrakumar, learned counsel for petitioner in W.P.No. 610/2004; Mr. K. Srinivasan for Pondicherry University; and Mr. R. Singaravelan for Medical Council of India.

6. In view of the fact that the issue raised in these writ petitions had already been considered by other High Court and this Court and orders passed, we are of the view that no elaborate discussion is required in these cases. The petitioners in these writ petitions are all persons who had completed MBBS Course through Pondicherry University and they had also undergone and completed their internship (House Surgeon) on the basis of interim order of this Court which has also been issued in favour of nearly about 25 other persons. These writ petitions have been filed for declaration to declare the petitioners having passed the MBBS examination with respective Registration Number as per the MCI Regulations, 1997, making them eligible to undergo Internship and become Registered Medical Practitioners.

7. The basis which culminated for these cases is that while declaring the results of the petitioners, the Pondicherry University state that separate minimum for Theory and Practical is required to be obtained as per the University Regulations. However, the MCI Regulations would prescribe 50% aggregate which reads as follows:

Pass : In each of the subjects a candidate must obtain 50% in aggregate with a minimum of 50% in Theory including orals and minimum of 50% in Practical/clinicals.

The MCI Regulations further prescribe that the grace marks upto a maximum of five marks may be awarded at the discretion of the

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University to a student who has failed only in one subject but has passed in all other subjects (Regulation 13 (10).

8. Messrs. N. Paul Vasanthakumar and L. Chandrakumar, learned counsel appearing for the petitioners, after taking us through various provisions from the MCI Regulations, brought to our notice a Division Bench judgment of the Kerala High Court interpreting the above regulations and method of calculation in finding out aggregate mark and subsequent orders by this Court, and submitted that the petitioners are also entitled to reap the benefits of those decisions. In Writ Appeal No. 1777 of 2002(C) dated 26-9-2002 (K. FAHAD MOHAMED AND OTHERS v. CALICUT UNIVERSITY), the Division Bench of the Kerala High Court (Hon'ble Mr. Justice B.N. SRIKRISHNA and Mr. Justice R. BASANT) while considering the Regulations of Medical Council of India and Calicut University, concluded that "In the result, we hold that under the Regulations a candidate shall be declared to have passed if he has got 50% of the aggregate marks in University theory orals + internal assessment theory and 50% of the aggregate marks in University practicals + internal assessment practicals/clinicals". By saying so, the Division Bench declared the appellants before them as passed and also issued direction to the University to redeclare the results in accordance with the above directions and permitted the appellants to continue their house surgencies.

9. In W.P.Nos. 25492 and 25884/2003 dated 31-10-2003 (SALINI NAIR AND ANOTHER v., PONDICHERRY UNIVERSITY REPRESENTED BY ITS REGISTRAR), one of us (P. Sathasivam, J.,) had an occasion to consider similar question. Following the Division Bench decision of the Kerala High Court (cited supra), similar directions have been issued in those Writ Petitions.

10. Though Pondicherry University has filed Writ Appeals only with reference to their claim that the University is entitled to frame higher standards than that of MCI, it is brought to our notice that the orders passed/directions issued have been fully implemented. In CONTROLLER OF EXAMINATIONS, PONDICHERRY UNIVERSITY v. SUDHAKAR, reported in 2005 (3) CTC 2, First Bench of this Court, while following the judgment of the Supreme Court in STATE OF TAMIL NADU v. S.B. PRADHEEP (2004 (2) CTC 227) and another Division Bench judgment rendered in Writ Appeal No.220 to 224 of 2004 CONTROLLER OF EXAMINATIONS, PONDICHERRY UNIVERSITY v. T.P. JAYAPRAKASH) dated 23-2-2005, accepted the contention of the University that they can prescribe higher qualifications than that fixed by the All India Council for Technical Education. However, direction has been issued namely that the writ petitioners are entitled to receive the necessary certificates from the University to enable them to produce before the Tamil Nadu Medical Council for registration and further direction was issued that if such certificate is produced, the

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Medical Council shall register the names of the appellant and the writ petitioner. Even in Writ Appeal Nos. 771 and 772 of 2004 dated 04-01-2005 (PONDICHERRY UNIVERSITY REPRESENTED BY ITS REGISTRAR AND OTHERS v. KRISHNA KABIR ANTHONY AND OTHERS) though the First Bench reiterated that it was open for the Pondicherry University to fix higher medical standard than those prescribed by the Medical Council of India, Pondicherry University itself informed the Bench that since the writ petitioners have completed the internship, they do not want to disturb them and they may also be registered as medical practitioners, but insisted a declaration of the law on prescribing higher standard by the University than that of MCI. It is also brought to our notice that in similar order dated 14-11-2003 made in W.P.Nos. 27901 to 27904 and 28519 of 2003 (T. JAYAPRAKASH and OTHERS v. THE CONTROLLER OF EXAMINATION, PONDICHERRY UNIVERSITY), the directions given by the learned Single Judge of this Court (D. Murugesan, J.,) have been implemented by the Pondicherry University. Learned counsel have also brought to our notice that similar directions issued by another learned Single Judge of this Court (N. Kannadasan, J.,) in W.P.Nos. 20385, 30049, 29882 and 31083/2003 dated 30-03-2005 have also been implemented by Pondicherry University. Mr. R. Singaravelan, learned counsel appearing for the MCI while admitting that all the above mentioned directions have been implemented by the Pondicherry University, contended that there is no need to issue similar directions in the above cases also. We are unable to accept his claim. It is not in dispute that as per the Regulations of MCI, as interpreted by the Division Bench of the Kerala High Court and followed by this Court in subsequent decisions, a candidate shall declare to have passed if he has got 50 per cent of the aggregate marks in University theory + orals + internal assessment theory and 50% of the aggregate marks in University practicals + internal assessment practicals/clinicals. It is also not in dispute by applying the same, the petitioners are entitled to grace marks upto a maximum of 5 marks who have failed only in one subject but have passed in all other subjects. As rightly pointed out, the Medical Council of India cannot be allowed to take inconsistent stand at various Courts. It is also brought to our notice that during the time when the petitioners herein were allowed to continue their internship course, the law holding the field was that of Adhiyaman's case reported in 1994 (4) SCC 104 and therefore based on the interim orders, the petitioners have been allowed to undergo their internship and have also completed the same.

11. It is relevant to point out that in para 14 of S.V. BRATHEEP's case (2004 (2) CTC 227), the Supreme Court has held that the admission made already, pursuant to the interim order of this Court, is valid and protected them to pursue the course and keeping the above aspect into consideration, the Pondicherry University gave consent for issuance of Certificates for other similarly placed persons, who are none other than the batchmates of these petitioners.

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It is also brought to our notice that the relief had been granted by this Court in 2005 (3) CTC 2 (cited supra) for the batch of students who had undergone the course along with the petitioners, lacking marks as per Pondicherry University Regulations and the results have been published and they have been completed successfully by grant of grace marks in one subject upto five marks and all of them registered as Medical Practitioners. It is also relevant to point out that during the course of hearing, learned counsel appearing for the Pondicherry University has brought to our notice that the Pondicherry University itself had informed to their standing counsel (Mr. K.Srinivasan) to the effect that as per the existing MCI Regulations, the internal marks both in the written and practical are taken into account while computing the pass of a student.

12. In the light of our discussion, petitioners are entitled to similar directions in their writ petitions; consequently, all the writ petitions are allowed and directions issued as prayed for. No costs.

10-11-2005

R.B.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Registrar,
   Pondicherry University,
   Kalapet, Pondicherry.

2. The Controller of Examinations,
   Pondicherry University,
   Kalapet, Pondicherry.

3. The Chairman,
   Medical Council of India,
   Opp. To Matusundari College for Women,
   New Delhi-110 002.

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4. The Dean,
   Vinayaka Missions Medical College,
   Keezakasakdi Post, Karaikal, Pondicherry.

3 ccs to Mr.R.Singaravelan, Advocate, SR.44491, 44493 and 44494
2 ccs to Mr.N.Paul Vasanthakumar, Advocate, SR.44400 & 44401
1 cc to Mr.L.Chandrakumar, Advocate, SR.44497
1 cc to Mr.K.Srinivasan, Advocate, SR.44533

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